



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2022-0112; FRL-9734-02-R1]

Air Plan Approval; New Hampshire; Rules for Particulate Emissions from Open Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions of New Hampshire Code of Administrative Rules Chapter Env-A 1000 submitted by the State of New Hampshire on January 8, 2020. Env-A 1000 establishes requirements for open burning, fugitive dust, and firefighter instruction and training activities. This action is being taken under the Clean Air Act.

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2022-0112. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at www.regulations.gov or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: Pujarini Maiti, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05-02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109-3912; (617) 918-1625; maiti.pujarini@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. Background and Purpose

On May 18, 2022 (87 FR 22821), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Hampshire proposing to approve two SIP revisions submitted by the State. Information about the proposed SIP revisions are as follows.

On January 8, 2020, NH DES submitted revisions of New Hampshire Code of Administrative Rules Chapter Env-A 1000 (Prevention, Abatement, and Control of Open Source Air Pollution) and Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources) to EPA for approval into the New Hampshire SIP. NH DES withdrew the January 2020 submission of Env-A 1000 to the SIP on July 19, 2021. On August 19, 2021, NH DES submitted another revision of Env-A 1000 to EPA for approval into the New Hampshire SIP. This regulation establishes requirements for open burning, fugitive dust, and firefighter instruction and training activities. NH DES submitted this revision to replace the current SIP-approved Env-A 1000 (83 FR 6972; February 16, 2018), which expired at the state level on May 1, 2019. The submittal also includes Appendices A and B, which provide references and definitions that are included in Env-A 1000. EPA has determined that the new version of Env-A 1000 is no less stringent than existing Env-A 1000 in the New Hampshire SIP and, therefore, meets requirements of section 110(l) of the Clean Air Act.

Herein, we are approving Env-A 1000. The rationale for this action is explained in the NPRM and will not be restated here. There were no public comments received on the NPRM.

At this time, we are not taking final action on Chapter Env-A 2800, which establishes requirements for particulate matter, visible emissions, and fugitive dust standards for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources.

II. Final Action

EPA is approving and incorporating Env-A 1000 into the New Hampshire SIP, which was submitted by the State of New Hampshire on August 19, 2021. However, we are not finalizing our proposal to approve Env-A 2800 at this time, which was submitted on January 8, 2020. EPA will take action on Env-A 2800 at a later time.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of New Hampshire regulation Env-A 1000, effective August 1, 2019, as described in section I. of this preamble and set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

¹ 62 FR 27968 (May 22, 1997).

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 28, 2022.

David Cash,
Regional Administrator,
EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE – New Hampshire

2. In § 52.1520, amend the table in paragraph (c) by revising the entry “Env-A 1000” to read as follows:

§ 52.1520 Identification of plan.

* * * *

(c) * * *

EPA-Approved New Hampshire Regulations

State citation	Title/subject	State effective date	EPA approval date ¹	Explanations
**	*	*	*	**
Env-A 1000	Control of Open Burning	8/1/2019	[Insert date of publication in the Federal Register]	Approve the amended Part Env–A 1000 “Prevention, Abatement and Control of Open Source Air Pollution” to supersede the previously SIP-approved version.
**	*	*	*	**

¹ In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

[FR Doc. 2022-16601 Filed: 8/10/2022 8:45 am; Publication Date: 8/11/2022]